UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/C.1/SR.27
20 November 1998

ORIGINAL: ENGLISH

# COMMITTEE OF THE WHOLE

## SUMMARY RECORD OF THE 27th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Wednesday, 8 July 1998, at 6 p.m.

*Chairman*: Mr. IVAN (Romania) (Vice-Chairman)

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V.98-57480 (E)

99-81121 (E) 090799

*The meeting was called to order at 6 p.m.*

**CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*)** (A/CONF.183/2/Add.1; A/CONF.183/C.1/L.53)

*Part 2 of the draft Statute (continued)*

1. **The CHAIRMAN** invited the Committee to continue its consideration of document A/CONF.183/C.1/L.53, and referred to the six questions to which the President had requested replies.

2. **Mr. ABDELKADER MAHMUD** (Iraq) said that the jurisdiction of the Court should cover genocide, crimes against humanity and war crimes. In the *chapeau* on war crimes, he supported option 3. In section B (o), concerning weapons, option 2 should be taken up, with the addition of a new subparagraph (vii) on weapons which contained enriched uranium. On aggression, he confirmed his support for the option contained in document A/CONF.183/C.1/L.37. If that option did not find general acceptance, the crime should not be included. Economic embargoes should be regarded as crimes against humanity. Sections C and D, concerning non-international armed conflicts, should not be included in the Statute.

3. **Mr. BOUGUETAIA** (Algeria) said that aggression had been defined by the General Assembly as a crime against international peace and should therefore be within the purview of the Court. He favoured the inclusion of treaty crimes, especially terrorism. However, a global and unified approach to such crimes was needed.

4. With regard to thresholds, under the subheading "War crimes", he agreed that the introduction to article 5 was rather restrictive. He would prefer option 2, because option 1, taken in the light of the introduction, might remove certain war crimes from the jurisdiction of the Court. On the question of weapons, he preferred option 2 under section B (o). The objection that the principle of *nullum crimen sine lege* might preclude listing some weapons because they were not prohibited under customary international law was not cogent. Moreover, the purpose of the Conference was, surely, to harmonize ethics, morality and law.

5. He was somewhat concerned about the inclusion of sections C and D, since that might lead to interference in the internal affairs of countries. It would be difficult to draw a line between a genuine armed internal conflict and internal disturbances.

6. The elements of crimes must be included, because the Court could not deal with crimes without knowing what their constituent elements were.

7. **Mr. HAFNER** (Austria) said that he was in favour of including aggression, provided that it was possible to agree on a definition. While he shared the concerns of those who had proposed the inclusion of treaty crimes, he found it difficult to support their views at the current juncture. He would like to include a text on United Nations personnel, but that should be dealt with in the framework of war crimes. With regard to the war crimes threshold, he could with hesitation accept option 2 as a compromise. Similarly, on the question concerning weapons, he could accept option 1 under section B (o) provided that subparagraph (iii) included a reference to exploding bullets and particular emphasis was laid in subparagraph (vi) on the possibility of introducing flexibility in the course of review conferences. That had to be harmonized with negotiations on articles 110 and 111.

8. The reference to internal conflicts was a sine qua non for his delegation. However, he saw no need to deal with the elements of crime, but would not refrain from cooperating on that issue, provided that the elements of crime were not incorporated in the Statute, but were addressed afterwards by the Preparatory Commission.

9. **Mr. PEREZ OTERMIN** (Uruguay) said that if the Court was to judge the most serious crimes affecting the international community as a whole, it was relevant to include genocide, crimes against humanity and war crimes. Aggression must also be included. On the other hand, it was difficult to accept the intervention of a political organ such as the Security Council in defining the existence or non-existence of a crime.

10. Owing to time constraints, it might be advisable not to consider the inclusion of terrorism, drug trafficking and crimes against United Nations personnel until a later stage.

11. His position on crimes against humanity was that attack must be defined as both systematic and generalized. As to war crimes thresholds, he preferred option 1. Most of the crimes within the purview of the Court arose in the course of internal conflicts. However, bearing in mind the concerns of some countries, the scope of those crimes in sections C and D should be more precisely defined, to make it perfectly clear that there was no intention to interfere in the internal affairs of States with fully established democratic regimes.

12. It was essential to include the elements of crimes.

13. **Mr. GAITAN MAHECHA** (Colombia) said that he preferred option 3 on the threshold for war crimes but, for the sake of general agreement, could accept option 2. He supported the inclusion of sections C and D on internal conflicts.

14. The elements of crimes should be established in a precise manner by the Preparatory Commission, to ensure strict compliance with the principle of *nullum crimen sine lege* contained in article 29 of the Statute. Although there were definitions for certain crimes such as genocide and forced disappearance in international law, those definitions had to be formulated very carefully for adoption in the Statute.

15. **Ms. LEHTO** (Finland) said that she endorsed the statement made by the representative of Austria on behalf of the European Union. It would be quite appropriate and timely for the Court to have jurisdiction over aggression, the definition of which contained in option 1 under the relevant heading of the discussion paper was acceptable. The inclusion of treaty crimes would not be advisable, and the jurisdiction of the Court should be limited to the core crimes, at least initially. The reasons were that its resources should be focused on the most serious international crimes and that there were still considerable problems of defining treaty crimes in some cases. Crimes against United Nations personnel could be included under war crimes.

16. Her clear preference on war crimes thresholds would be for option 3. However, she could accept option 2, which seemed to enjoy broad support, as a compromise. Concerning weapons, option 1 would be an acceptable compromise, in view of the support it had received. However, the *chapeau* and paragraphs 3 and 6 might still need some revision.

17. On internal conflicts, she strongly supported the inclusion of both sections C and D, as otherwise the Court would be left toothless with respect to most current armed conflicts. In her view, no further elaboration of elements of crimes under the Court's jurisdiction was necessary, but she was prepared to be flexible if the general view of the Conference was that a paper on the subject should be drafted by the Preparatory Commission, provided that the entry into force of the Statute was not delayed.

18. **Mr. CASTELLAR DUARTE** (Nicaragua) said that he agreed with the presentation of the crimes set out in article 5. With regard to war crimes, he supported the reference to both international and internal conflicts, and consequently the inclusion of sections C and D. Aggression should be included, subject to achieving a consensus on its definition. However, the role of the Security Council should be as limited as possible and should not undermine the independence of the Court.

19. Treaty crimes should be included, and he therefore supported option 1, but, in view of conflicting opinions, it might be advisable to refer the issue to a review conference. The definition of crimes against humanity was acceptable to his delegation. Genocide, as defined in the draft Statute, should be included. He hoped that consideration of the elements of crimes would not delay the entry into force of the Statute, and that subsequently those elements would be included in an annex to the Statute.

20. **Mr. Khalid Bin Ali Abdulla AL-KHALIFA** (Bahrain) said that aggression should be included, taking account of the definition in General Assembly resolution 3314 (XXIX) of 1974. He endorsed what had been said by the representatives of the Syrian Arab Republic and Egypt. At that stage, treaty crimes should not be included, because they required further consideration. Although he supported option 3 on war crimes thresholds, he could accept option 2. There should be an exhaustive list of weapons which caused superfluous injury and unnecessary suffering, or were inherently indiscriminate.

21. He found the thresholds in sections C and D difficult to accept because there was no positive definition of non-international conflicts. An exact definition of internal conflicts would be required, along the lines of Additional Protocol II to the Geneva Conventions, and great care must be taken not to interfere in the internal affairs of States. The definition must take into account situations of peace and of armed conflict, as well as situations of violence which did not amount to armed conflict.

22. There was no link between crimes against humanity and terrorism. With regard to gender-based crimes, he pointed out that the word "gender" was not defined in the English version of the discussion paper, though document A/CONF.183/C.1/L.51 contained a definition. Crimes against humanity should be considered as consisting of acts committed in a systematic and widespread way during armed conflict or, indeed, before such armed conflict.

23. **Ms. TOMIČ** (Slovenia) said that she favoured the inclusion of aggression within the Court's jurisdiction, and thus supported option 1. The reasons for the inclusion of treaty crimes, such as crimes related to drug trafficking, were quite understandable, but that question would be more appropriately dealt with later, perhaps through an early review of the Statute. There should be no threshold provision for war crimes, so that she preferred option 3, but could support option 2 as a compromise. Since she considered that jurisdiction over war crimes committed in internal armed conflicts was a necessary prerogative of the Court, she supported the inclusion of sections C and D. Section B, paragraphs (p *bis*) and (r *bis*), on United Nations personnel should be included.

24. Under section B (o) on weapons, she preferred option 3 but would be willing to work on the basis of option 1 if the words "inherently indiscriminate" were added in the *chapeau*, and if the wording from the draft Statute itself were incorporated in subparagraph (vi).

25. She was flexible about the elements of crimes, even though she remained doubtful as to the necessity of including them. However, that should in no way delay the entry into force of the Statute.

26. **Mr. PRANDLER** (Hungary) said that he associated himself with the position taken by the European Union on document A/CONF.183/C.1/L.53. He was still in favour of including aggression, if general agreement could be reached on a definition. The formulation contained in the discussion paper, although minimal, did refer to the most important elements and acts which might constitute aggression. However, in defining aggression, the prerogatives of the Security Council in determining any act of aggression must not be prejudiced.

27. Treaty crimes need not be included. As to thresholds for war crimes, option 2 was the right approach. He supported the retention of sections C and D on non-international armed conflict and regretted that several delegations were opposed to their inclusion. A great majority of the armed conflicts in the world over the past 50 years had been of a non-international character.

28. **Mr. ROBINSON** (Jamaica) said that the question of elements of crimes was perhaps the most important question to be considered. He was not entirely convinced of the need to include them at all. Other courts managed without the benefit of any detailed statement of such elements, and there was an abundance of case law. If, however, the issue was to be addressed, the proper forum was the Plenipotentiary Conference. It was not a matter for a Preparatory Commission. If the elements were to be an integral part of the Statute, they would be binding on the Court, as distinct from being merely recommendatory, and would have to be formulated before the Statute entered into force.

29. As matters stood, he would not support the inclusion of treaty crimes in the Statute, though he was open to considering any fair and reasonable resolution of the issue.

30. **Mr. NATHAN** (Israel) said that the first essential precondition for the inclusion of aggression in the jurisdiction of the Court was a precise and generally accepted definition. The second was to safeguard the position of the Security Council under article 39 of the Charter. Although option 1 spoke of attack by the armed forces of a State on the territory of another State, it completely disregarded other grave acts of aggression.

31. It would not be appropriate to include treaty crimes in the Statute. The Conventions of The Hague and Montreal provided for universal jurisdiction on treaty crimes.

32. His delegation reserved its position on section B (f), relating to the transfer of population. In particular, the references to "transfer, directly or indirectly" and the "population of the occupied territory within or outside this territory" should be deleted.

33. With regard to the war crimes threshold, he would support option 1. Article 16 of the draft Code of Offences against the Peace and Security of Mankind contained a similar threshold clause. Such a clause would certainly be appropriate for inclusion in the Statute. Section B (o) should include a specific enumeration of the prohibited weapons, because of the need for clear definitions as a matter of legal principle. Further consideration should be given to the wording of subparagraph (vi), on future prohibitions under conventional and customary law, in order to formulate an adequate and precise definition.

34. As many atrocities during recent decades had been committed in internal conflicts, it was essential that they be subject to international law, and sections C and D should therefore be included.

35. It would certainly be necessary to define the elements of crimes under the jurisdiction of the Court, to assist it in interpreting the Statute. The definitions should be contained in an annex which should form an integral part of the Statute. The drafting of such an annex should not delay the entry into force of the Statute.

36. **Ms. AGUIAR** (Dominican Republic) said that article 5 had no need of a *chapeau*, which could only undermine the strength of the Court. A listing of the crimes within the jurisdiction of the Court would be sufficient. She could agree to including aggression, so long as a clear and mutually acceptable definition could be established. The definition should stipulate the role of the Security Council. General Assembly resolution 3314 could serve as a basis for finding common understanding, because it had been adopted by a large majority of Member States.

37. In view of the state of customary law, it was perhaps not the opportune moment to include treaty crimes in the jurisdiction of the Court. However, the issue should be left open for review.

38. Both options 1 and 2 on war crimes thresholds were unsatisfactory. To kill intentionally was equally serious, whether or not it was part of a plan or general policy. She therefore favoured option 3, perhaps together with the *chapeau* of option 2.

39. She advocated including a list of weapons, materials and methods of war that caused damage or unnecessary suffering or had indiscriminate effects, the latter being the key factor. She favoured option 1, which included a potentially open list, especially in subparagraph (vi), which would make it possible to take into account technological progress in the arms industry.

40. Supporting the principle of legality expressed by *nullum crimen sine lege, nulla poena sine lege,* she said that the elements of crimes must not be left to a later stage. States parties must be sure of the commitments they were undertaking. The core crimes, however, were well defined by reference to existing instruments, thus satisfying the requirement of legality. Lastly, she was concerned that some types of crimes used as methods of war, for instance, sex abuse against women and children, were not contained in the document.

41. **Mr. R. P. DOMINGOS** (Angola) said that he strongly supported the statements made by South Africa, on behalf of the Southern African Development Community, and Lesotho, on behalf of the African Group. Genocide, crimes against humanity and war crimes should be included in the Statute. With regard to war crimes, both sections A and B were acceptable. In section B (o), he supported option 2, although he could accept option 1, given the addition of nuclear weapons and of anti-personnel mines, from option 2. He supported option 1 in both sections C and D.

42. He was not yet decided whether aggression should be included in the Statute. A clear definition was needed, so as to take account of General Assembly resolution 3314, and, particularly, the role of the Security Council. Acts committed by mercenaries should also be of concern to the international community, and as such included in the Court's jurisdiction.

43. **Ms. LA HAYE** (Bosnia and Herzegovina) said that she favoured the inclusion of aggression, provided that a wider definition was adopted, perhaps on the lines of the amended German proposal. However, if the issue continued to divide the Conference, it might be better to defer consideration. As to treaty crimes, she would favour the inclusion of crimes against United Nations personnel. On war crimes, she had a strong preference for option 3, but, in a spirit of compromise, could accept option 2. Regarding weapons, she favoured option 3, which seemed to represent the best reflection of customary international humanitarian law. However, for the sake of consensus, she could accept option 1, which contained a restricted list of prohibited weapons.

44. On internal armed conflicts, she strongly favoured the inclusion of sections C and D. She was in total agreement with Switzerland regarding the definition under customary international law of the crimes listed in section

D. There was no need for a threshold, but, if one were adopted, it should apply to war crimes committed both in international and non-international armed conflict.

45. Most elements of crimes were already established in treaty and customary international law. In defining the scope of the jurisdiction of the Court, it would be appropriate to refer to existing law.

46. **Mr. BIHAMIRIZA** (Burundi) said that he supported the inclusion of the core crimes and could also support the inclusion of aggression. Economic embargoes, which subjected the vulnerable population to great suffering, should also fall under the jurisdiction of the Court. Regarding war crimes, he favoured option 3, provided that there was a clear and exhaustive list of such crimes. As to the list of weapons prohibited under paragraph (o), he favoured option 2 but, in a spirit of compromise, would be prepared to accept option 3, provided that the list remained open. The Court should not have competence with respect to internal conflicts. He would favour defining the elements of crimes after the Conference, provided that the Statute's entry into force were not delayed.

47. **Mr. LEHMANN** (Denmark) said that it would be a most unfortunate signal to the world public if the primary crime of aggression could not be included in the Statute. The Charter was based on the need to save succeeding generations from the scourge of war. To claim that aggression could not be included in the Statute because it had not been defined was unacceptable. Furthermore, the nonsensical situation could arise that, if the Security Council referred a case of aggression to the Court, the Court would not be able to try the individuals responsible.

48. He was more flexible on treaty crimes, especially if a review clause were incorporated in the Statute. As to the question of the threshold for war crimes, the Geneva Conventions distinguished between breaches and grave breaches of international humanitarian law, the latter being war crimes. Raising the threshold to "extremely" grave breaches might undermine the whole concept behind the language of the Geneva Conventions. He could accept option 2 at the current stage of developments.

49. With regard to weapons, he could accept option 1, seen in the context of the principle of *nullum crimen sine lege*. It was essential to incorporate sections C and D. Finally, on elements of crimes, the judges and the Court needed to know exactly what was intended by the drafters. Perhaps, however, the final draft of the Statute would to some extent obviate the need for including such elements. Some might perhaps be incorporated into the Rules of Procedure and Evidence. If a third document on elements of crimes did prove necessary, it should constitute a guide to the Court. But the adoption and entry into force of the Statute should not be delayed by work on such a document.

50. **Mr. MIKULKA** (Czech Republic) said that he associated himself with the statement made by Austria on behalf of the European Union. He was firmly convinced that aggression should be included in the Statute. However, as there seemed to be no consensus on the inclusion of treaty crimes it would be better to defer consideration of that issue to a review conference.

51. It was not necessary to establish a threshold for war crimes. He therefore preferred option 3, but could accept option 2 as a compromise. The list of prohibited weapons in option 3 of section B (o) was acceptable, but again, as a compromise, he could accept option 1. Sections C and D on crimes committed in non-international armed conflict should be included in the Statute. He understood the difficulties of States not party to Additional Protocol II, but, after hearing the representative of Mexico, believed that the problem could be overcome.

52. Although not convinced that it was really necessary to elaborate elements of crimes, he would not object if that were the wish of the majority. However, their legal status, their relationship with the Statute and their form should first be clarified.

53. **Ms. DABROWIECKA** (Poland) said that she fully endorsed the remarks of previous speakers, especially Denmark and the Czech Republic on aggression, which should be included in the Statute, on the basis of the definition contained in option 1.

54. Although generally in favour of including treaty crimes, she said that they should be considered at a review conference, given the complexity of the issues involved and time constraints. She would support option 2 on the threshold for war crimes, and option 1 of section B (o) on weaponry. She reiterated her firm support for the inclusion of sections C and D in the Statute. The formulation of a text on elements of crimes should not impede the entry into force of the Statute.

55. **Mr. NGATSE** (Congo) said that the Court should have jurisdiction over genocide, as defined in the 1948 Geneva Convention, war crimes and crimes against humanity, and also over aggression. The proposed definition of aggression in the discussion paper was not satisfactory, but work on defining aggression could be continued after the Conference, provided that the crime was mentioned in the Statute.

56. He was not opposed to the inclusion of treaty crimes, since the role of the Court was to ensure legal protection for the international community.

57. Concerning crimes against humanity, he restated his view that, in the *chapeau* to paragraph 1, the term "generalized" or "systematic" might be used with reference to attacks. On war crimes, he preferred option 3, which reflected existing international law. War crimes could be committed in the context of an internal conflict and must be taken into account in article 5 of the Statute. With regard to the various options under war crimes, option 2 could be a compromise solution. He favoured option 1 of section B (o), as long as weapons of mass destruction were included. Elements of crimes should be included in the Statute. They could be established by the Preparatory Commission, provided that the entry into effect of the Statute was not delayed, or its legal status undermined.

58. **Mr. AMEHOU** (Benin) said that genocide, crimes against humanity, war crimes, and the crime of aggression should be included in the Statute. Terrorism should also fall within the jurisdiction of the Court. He suggested that consideration of the other treaty crimes should continue in the Preparatory Commission, with a view to their inclusion at a later stage. Concerning the war crimes *chapeau*, he supported option 3. The jurisdiction of the Court was already stated at the beginning of article 5. The burden of proof mentioned in options 1 and 2 would be too great for the Prosecutor. However, for the sake of compromise, he could accept option 2 if that were the majority choice.

59. On the crime of aggression, option 1 was acceptable to him. As the Court was to try individuals and not States, it would be helpful to add the phrase "of which the accused is a national" after the words "a State" in the third line of option 1 in the English text. In section B (o) on weapons, he supported option 2. Sections C and D should clearly be included in the Statute. Detailed consideration of the elements of crimes should be referred to the Preparatory Commission for further consideration.

60. **Mr. EFFENDI** (Indonesia) said that he was flexible on the issues on which he did not comment. However, crimes against humanity and war crimes, with specific reference to crimes against women, should be included in the Statute. There should be no threshold provision on war crimes. On section B (o), he preferred option 2, but option 3 might be preferable as a compromise solution. Failing acceptance of option 3, option 2 would provide a

good basis for discussion. The perpetrators of the crimes specified in sections C and D could be punished using the provisions of crimes against humanity, so that those sections need not be included. He was open to a compromise solution, in which context due account should be taken of customary international law.

61. **Ms. ASSOUMANY** (Comoros) said that she favoured the inclusion of aggression in the Statute. On war crimes, she preferred option 2. Further discussion was necessary on sections C and D on non-international armed conflicts. Crimes against humanity should include acts of terrorism, but further work was needed on a definition of the latter. Treaty crimes should be included in the Statute. Recalling her delegation's proposal in document A/CONF.183/C.1/L.46, she said that acts committed by mercenaries should be included as crimes under the Statute, because they constituted a serious threat to the stability and constitutional order of States.

62. **Mr. ASSHAIBANI** (Yemen) said that aggression should be included, with an appropriate definition. He could, in a spirit of cooperation, accept the inclusion in the Statute of war crimes committed in non-international conflicts, on the understanding that the Court's jurisdiction began when the political structure of a State collapsed totally, not just partially.

63. With regard to section B (o) on weapons, he preferred option 2. There should not be a selective approach to treaty crimes, which should therefore not be included in the Statute. Finally, he agreed that the elements of crimes should be studied in the context of the Preparatory Commission, once the Conference had been concluded.

64. **Mr. PHAM TRUONG GIANG** (Viet Nam) said that he strongly supported the inclusion of aggression as a core crime in the Statute, and noted that the last paragraph under "Aggression" mentioned that elements from General Assembly resolution 3314 might be inserted in the definition. He insisted on the retention of the words "armed conflict" in the *chapeau* under "Crimes against humanity". Serious consideration should be given to including economic and other blockades in paragraph (j) on inhumane acts.

65. To achieve a generally acceptable solution, he supported option 1 under section B (o), with the inclusion of nuclear weapons. He strongly advocated excluding sections C and D.

66. Treaty-based crimes might be punished by the international community, but, owing to time constraints, those crimes should be left, for the time being, to the national jurisdiction of the States concerned.

67. It was important to define elements of crimes, in order to give clear practical guidance. That task should be undertaken by the Preparatory Commission.

68. **Ms. KLEOPAS** (Cyprus) said that she strongly supported the inclusion of aggression under the Court's jurisdiction, though she was willing to compromise on its definition and might accept option 1 as a basis for discussion.

69. She opposed the inclusion of treaty crimes, for the reasons stated by the United Kingdom delegation. With regard to a threshold for war crimes, she was in favour of option 3, but could accept option 2 as a compromise solution. In section B (o) on weapons, she favoured option 3, but could accept option 1 as a compromise. She had no objection to the inclusion of sections C and D.

70. She saw no need to include elements of crimes in the text, and said that they could be considered at a later stage, provided that the entry into force of the Statute was not affected thereby.

71. **Mr. BHATTARAI** (Nepal) said that he favoured the inclusion of aggression in the Statute. However, an acceptable definition of that crime, as well as consideration of the role of the Security Council, were essential prerequisites.

72. Concerning treaty crimes, he supported option 1 as indicated in paragraph (e) of the *chapeau* of article 5, but could accept option 2 as a compromise, provided that there would be scope for the inclusion of those crimes at a later stage. Under the "War crimes" heading, he favoured option 2. In section B (o), he supported option 2, owing to its greater clarity. For the sake of compromise, however, he could be flexible towards option 1, with some amendments to accommodate various concerns.

73. The inclusion of sections C and D at that stage would cause difficulties for countries that were not party to Additional Protocol II to the 1949 Geneva Conventions.

74. **Mr. PALIHAKKARA** (Sri Lanka) said that he did not object to the inclusion of genocide. He agreed with the presentation of crimes against humanity contained in the *chapeau*. However, the recruitment of children into the armed forces of governmental and non-governmental entities should also be covered. It should also be made quite clear that the final words of paragraph 2 (a) under "Crimes against humanity", reading "... a State or organizational policy to commit such attack;" were also intended to cover the policy of non-governmental entities.

75. He asked whether the absence of the word "war" in the text of the provisions under "War crimes" was intended to imply that some international armed conflict was not regarded as war.

76. Concerning weaponry, he could accept option 1 of section B, paragraph (o), with the inclusion of nuclear weapons, or option 3.

77. The proposed elaboration by the Preparatory Commission of elements of war crimes would constitute a fundamental departure from the way in which general multilateral treaties were negotiated in the United Nations. However, he had no objection to the formulation of draft Rules of Procedure and Evidence by the Preparatory Commission.

78. Finding an acceptable definition of aggression was an extremely difficult task, being related to questions of Security Council vetoes or perhaps a consultative role of the General Assembly. However, he hoped that a definition could be agreed upon and included in the Statute.

79. Further consideration should be given to the inclusion of terrorism, crimes related to drug trafficking and crimes against United Nations personnel.

80. Section C on internal armed conflict was broadly acceptable, but, unless there were a complete breakdown of the judicial and administrative structure, due regard should be paid to the principle of complementarity. He had extreme difficulty with section D, largely because of the assumption that customary international law was generally applicable.

81. **Mr. MUSSAVOU MOUSSAVOU** (Gabon) said that he favoured the inclusion of the crime of aggression within the jurisdiction of the Court, since not to do so would be to ignore the cruel reality of such acts. Of course, both the nature of the crime and the role of the Security Council must be defined, the latter so as not to infringe the jurisdiction of the Court. Despite the importance of treaty crimes, the jurisdiction of a criminal court should, for the time being, be restricted to the core crimes. Under the war crimes threshold, he favoured option 3, as options 1 and

2 appeared restrictive in their scope. However, in a spirit of compromise, he could accept option 2. On the lists of crimes, if the Court had to deal with the most serious crimes, it also had to define them, so option 3 had his full support. Option 1 would be acceptable as a compromise. Armed conflicts of a non-international character should be included in the Statute. He favoured option 1 in both sections C and D. Finally, it was not necessary to include the definition of elements of crimes, because that would delay the entry into force of the Statute.

*The meeting rose at 9 p.m.*